IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CR No. 15-3051 JB
	)	
vs.	)	
	)	
RICHMOND SAM,	)	
	)	
Defendant.	)	

UNITED STATES SENTENCING MEMORANDUM

The United States has reviewed the pre-sentence report filed by probation in the above-captioned case. This memorandum requests that this Honorable Court accept the Federal Rule of Criminal Procedure Rule 11(c)(1)(C) plea agreement entered by the Defendant on December 31, 2015 before this Honorable Court. The United States further requests that the Court sentence the Defendant to the high-end of the proposed guideline range which is 21 months.

As an initial matter, the United States has no objections to the facts as set forth in the pre-sentence report. The pre-sentence report disclosed on March 15, 2016, correctly calculated the applicable offense level and criminal history relevant to the Defendant. The Defendant's adjusted total offense level, with acceptance, stands at 15. PSR ¶ 81. His criminal history category is III. PSR ¶ 81. The term of supervised release is not more than 3 years. PSR ¶ 84. Acknowledging that the plea agreement radically reduces the defendant's exposure to incarceration, the United States urges the Court to accept the agreement based on the fact that grounds for the plea are significantly tied to the facts of the case and the detrimental impact proceeding to trial would likely have on all parties involved.

The difficulties associated with this case partially arise in the context of the reliability of the witness involved. The three brothers that went to the Defendant's home, including John Doe, were intoxicated, and damaged the Defendant's home and property. One of the biggest obstacles to the case was the reliability and credibility of the witnesses and even more so, whether or not they would even show up at trial. If one of the witnesses decided not to show, the government's case in chief would collapse, the jury would more likely rely upon the Defendant and his version of events, which was well articulated in his statement to law enforcement. A spokesperson for the family had conveyed to the government that the brothers would likely be a no show at the day of trial. The allegation by the Defendant that one of the brothers was firing a rifle from the vehicle would become an even more difficult obstacle to overcome if one of the witnesses decided not to show. The government wasn't privy to what defenses witnesses would testify to, but the defense had eluded to the fact that one of their witnesses would testify that they heard or saw another weapon being fired, corroborating the Defendant's version of events. Although there were no expended shells collected from the crime scene to support the Defendant's claim, the government recognizes that the Defendant's response to that claim is that the shells were expended in the vehicle that John Doe was driving. One of the brothers ran from the vehicle after the shooting, and the vehicle ultimately was taken to their sister's residence where it was hours later found by law enforcement. The United States agrees with the analysis that the Defendant's self-defense claim could have resulted in an acquittal or at the very least a step down to involuntary manslaughter which would have resulted in a sentence of two to three years. Taking those things into consideration, as well as the criminal history of the victim and his brothers, the parties negotiated a plea that reconciled what would have otherwise been an indeterminate trial dynamic.

The dynamic of a plea agreement, if it works effectively, creates a bilateral benefit of some mutual concessions, and value afforded to each party for entering into the agreement. There is no case that arranges itself out without flaws and this case, with all of its associated imperfections, certainly is not a case that is flawless. Both parties put forth a tremendous amount of time, discussion, and reasoning behind what we struggled to achieve, which was an unpretentious conclusion that accounted for the loss of life, and accountability for one's wrongdoing.

With great empathy and recognition, the United States understands that this case will not restore what was lost for the Defendant's family, nor will it leave the Defendant without punishment. The parties made a vigilant effort at resolving a case with several complications, with a hope that the resolution will hopefully bring sense of closure to the family that has lost a loved one. Although seven months of additional incarceration may seem modest, a sentence of 21 months better represents a sentence closer in proximity to the guidelines submitted by probation.

Wherefore, for the reasons described above, the United States respectfully requests that this Honorable Court accept the plea agreement in the above-captioned matter and sentence the Defendant to 21months incarceration.

Respectfully submitted,

DAMON P. MARTINEZ
United States Attorney

_____*/s/*_____________________________
DAVID ADAMS and JACK BURKHEAD
Assistant United States Attorneys
P.O. Box 607
Albuquerque, NM 87103
(505) 224-1486

I hereby certify that on March 29, 2016, the foregoing was filed electronically through the CM/ECF system, which caused counsel for the defendant to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

_____*/s/*________________________
DAVID ADAMS
Assistant United States Attorney